

# HOUSE BILL 766

M1

8lr1822  
CF SB 610

---

By: Delegates Healey, Barkley, Carr, Fraser-Hidalgo, Frush, Hayes, Hettleman, Hill, Jones, Korman, Lafferty, Lam, R. Lewis, Lierman, Luedtke, McIntosh, Morales, Pena-Melnyk, Reznik, Robinson, Turner, and P. Young

Introduced and read first time: February 1, 2018

Assigned to: Environment and Transportation

---

## A BILL ENTITLED

1 AN ACT concerning

2 Natural Resources – Forest Conservation Act – Standards and Requirements

3 FOR the purpose of altering the reforestation ratio required for the certain clearing of trees  
4 in a priority retention area; requiring for a development project that priority  
5 retention areas be retained, protected, and left in an undisturbed condition unless  
6 the permit applicant has provided certain written justification that is affirmatively  
7 approved with written findings by the State or local approval authority; requiring a  
8 written justification for failing to retain or protect a priority retention area to include  
9 certain statements; prohibiting a State or local approval authority from approving a  
10 written justification based on certain factors; prohibiting the clearing of priority  
11 retention areas for certain purposes; altering the process for the concurrent review  
12 of certain development plans and a forest conservation plan by a State or local  
13 approval authority; authorizing certain local authorities to enter into certain  
14 agreements with certain entities to facilitate replanting or reforestation projects  
15 under certain circumstances; requiring the Department of Natural Resources to  
16 publish a Forest Conservation Act technical manual for certain purposes and to  
17 review and update the technical manual over a certain interval of time; requiring  
18 the Department, in consultation with the Sustainable Forestry Council, to update  
19 the technical manual for certain purposes on or before a certain date; stating the  
20 purpose of the Forest Conservation Act; defining the term “priority retention area”;  
21 making certain conforming changes; making certain stylistic changes; and generally  
22 relating to standards and requirements under the Forest Conservation Act.

23 BY repealing and reenacting, without amendments,  
24 Article – Natural Resources  
25 Section 5–1601(a), 5–1608(b), and 5–1610(c), (h), (j), and (k)  
26 Annotated Code of Maryland  
27 (2012 Replacement Volume and 2017 Supplement)

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to

2 Article – Natural Resources

3 Section 5–1601(ff–1), 5–1601.1, and 5–1614

4 Annotated Code of Maryland

5 (2012 Replacement Volume and 2017 Supplement)

6 BY repealing and reenacting, with amendments,

7 Article – Natural Resources

8 Section 5–1606, 5–1608(a), and 5–1610(i)

9 Annotated Code of Maryland

10 (2012 Replacement Volume and 2017 Supplement)

11 BY repealing and reenacting, with amendments,

12 Article – Natural Resources

13 Section 5–1607(c)

14 Annotated Code of Maryland

15 (2012 Replacement Volume and 2017 Supplement)

16 (As enacted by Chapter 298 of the Acts of the General Assembly of 2009)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
18 That the Laws of Maryland read as follows:

19 **Article – Natural Resources**

20 5–1601.

21 (a) In this subtitle the following words have the meanings indicated.

22 (FF–1) (1) “PRIORITY RETENTION AREA” MEANS AN AREA THAT  
23 CONTAINS HIGH-QUALITY FORESTS AND TREES.

24 (2) “PRIORITY RETENTION AREA” INCLUDES:

25 (I) TREES, SHRUBS, AND PLANTS LOCATED IN SENSITIVE  
26 AREAS INCLUDING 100-YEAR FLOODPLAINS, INTERMITTENT AND PERENNIAL  
27 STREAMS AND THEIR 100-FOOT BUFFERS, COASTAL BAYS AND THEIR BUFFERS,  
28 STEEP SLOPES, AND CRITICAL HABITATS;

29 (II) CONTIGUOUS FOREST THAT IS AT LEAST:

30 1. 5 ACRES IN A PRIORITY FUNDING AREA THAT  
31 CONNECTS THE LARGEST UNDEVELOPED OR MOST VEGETATED TRACTS OF LAND  
32 WITHIN AND ADJACENT TO THE SITE;

1                                   2.     10 ACRES THAT IS IN A LOCAL WATERSHED THAT IS  
2 LESS THAN 40% FORESTED; OR

3                                   3.     20 ACRES;

4                                   (III) AN AREA IDENTIFIED IN THE MERLIN OR IMap  
5 DATABASES AS A TARGETED ECOLOGICAL AREA OR FOREST INTERIOR DWELLING  
6 SPECIES HABITAT, UNLESS A FOREST STAND DELINEATION SHOWS THAT THE AREA  
7 IS NOT FORESTED OR IS DEGRADED BY WIDESPREAD DISEASE, INVASIVE SPECIES,  
8 OR INSECT INFESTATION;

9                                   (IV) FORESTS IN A DRINKING WATER RESERVOIR WATERSHED  
10 OR A WELLHEAD PROTECTION AREA;

11                                  (V) TREES, SHRUBS, OR PLANTS IDENTIFIED ON THE LIST OF  
12 RARE, THREATENED, OR ENDANGERED SPECIES OF THE U.S. FISH AND WILDLIFE  
13 SERVICE OR THE DEPARTMENT;

14                                  (VI) TREES THAT ARE PART OF A HISTORIC SITE OR ASSOCIATED  
15 WITH A HISTORIC STRUCTURE OR DESIGNATED BY THE DEPARTMENT OR LOCAL  
16 AUTHORITY AS A NATIONAL, STATE, OR LOCAL CHAMPION TREE; AND

17                                  (VII) TREES HAVING A DIAMETER MEASURED AT 4.5 FEET ABOVE  
18 THE GROUND OF:

19                                   1.     30 INCHES; OR

20                                   2.     75% OF THE DIAMETER OF THE CURRENT STATE  
21 CHAMPION TREE OF THAT SPECIES AS DESIGNATED BY THE DEPARTMENT.

22 5-1601.1.

23                   FOR THE BENEFIT OF THE CITIZENS OF MARYLAND AND IN RECOGNITION OF  
24 THE FINDINGS OF THE GENERAL ASSEMBLY UNDER § 5-102 OF THIS TITLE, IT IS THE  
25 PURPOSE OF THIS SUBTITLE TO MINIMIZE FOREST CLEARING DURING THE  
26 DEVELOPMENT PROCESS, ENSURE THE PROTECTION AND RETENTION OF THE MOST  
27 DESIRABLE FOREST STANDS, AND ESTABLISH AREAS WHERE NEW FORESTS MAY BE  
28 PLANTED TO OFFSET LOSSES FROM UNAVOIDABLE FOREST CLEARING.

29 5-1606.

30                   (a)   (1)   For the following land use categories, tracts having less than 20% of the  
31 net tract area in forest cover shall be afforested up to 20% of the net tract area:

1 (i) Agriculture and resource areas; and

2 (ii) Medium density residential areas.

3 (2) For the following land use categories, tracts having less than 15% of the  
4 net tract area in forest cover shall be afforested up to 15% of the net tract area:

5 (i) Institutional development areas;

6 (ii) High density residential areas;

7 (iii) Mixed use and planned unit development areas; and

8 (iv) Commercial and industrial use areas.

9 (3) Afforestation requirements must conform to the conditions in §§ 5-1607  
10 and 5-1610 of this subtitle, including payment into the Forest Conservation Fund, if  
11 afforestation on-site or off-site cannot be reasonably accomplished.

12 (4) (i) The afforestation requirements under this subsection shall be  
13 accomplished within 1 year or 2 growing seasons after the completion of the development  
14 project.

15 (ii) If afforestation cannot be reasonably accomplished on-site or  
16 off-site, the requirement to contribute money to a Forest Conservation Fund under §  
17 5-1610 of this subtitle shall be met within 90 days after the completion of the development  
18 project.

19 (5) Linear projects that involve no change in land use may not be subject  
20 to afforestation requirements.

21 (b) (1) There is a forest conservation threshold established for all land use  
22 categories as provided in subsection (c) of this section.

23 (2) The forest conservation threshold means the percentage of the net tract  
24 area at which the reforestation requirement changes from a ratio of 1/4 acre planted for  
25 every 1 acre removed **OR 1 ACRE PLANTED FOR EVERY 1 ACRE OF PRIORITY**  
26 **RETENTION AREA REMOVED** to a ratio of 2 acres planted for every 1 acre removed.

27 (c) After every reasonable effort to minimize the cutting or clearing of trees and  
28 other woody plants is exhausted in the development of a subdivision plan and grading and  
29 sediment control activities and implementation of the forest conservation plan, the forest  
30 conservation plan shall provide for reforestation, or payment into the Forest Conservation  
31 Fund, according to the formula set forth in subsection (b) of this section and consistent with  
32 the following forest conservation thresholds for the applicable land use category:

33 (1) Agricultural and resource areas: 50% of net tract area;

(2) Medium density residential areas: 25% of net tract area;

(3) Institutional development areas: 20% of net tract area;

(4) High density residential areas: 20% of net tract area;

(5) Mixed use and planned unit development areas: 15% of net tract area;  
and

(6) Commercial and industrial use areas: 15% of net tract area.

(d) (1) (I) Subject to [the provisions of] paragraph (2) of this subsection, for all existing forest cover **NOT LOCATED IN A PRIORITY RETENTION AREA** measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 1/4 acre planted for every 1 acre removed.

(II) **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR ALL EXISTING PRIORITY RETENTION AREA MEASURED TO THE NEAREST 1/10 ACRE CLEARED ON THE NET TRACT AREA ABOVE THE APPLICABLE FOREST CONSERVATION THRESHOLD, THE AREA OF FOREST REMOVED SHALL BE REFORESTED AT A RATIO OF 1 ACRE PLANTED FOR EVERY 1 ACRE REMOVED.**

(2) Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under paragraph (1) of this subsection.

(e) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for every 1 acre removed.

(f) (1) The reforestation requirements under this section shall be accomplished within 1 year or 2 growing seasons after completion of the development project.

(2) If reforestation cannot be reasonably accomplished on-site or off-site, the requirement to contribute money to a Forest Conservation Fund under § 5-1610 of this subtitle shall be met within 90 days after completion of the development project.

(g) A unit of local government with planning and zoning authority may adopt forest conservation thresholds and afforestation and reforestation requirements as part of its local forest conservation program that are more stringent than the forest conservation thresholds and afforestation and reforestation requirements in this section.

(c) (1) (I) [The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the State or local authority, that reasonable efforts have been made to protect them and the plan cannot reasonably be altered:

(i) Trees, shrubs, and plants located in sensitive areas including 100-year floodplains, intermittent and perennial streams and their buffers, coastal bays and their buffers, steep slopes, and critical habitats; and

(ii) Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.

(2) The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the State or local authority, that the applicant qualifies for a variance under § 5-1611 of this subtitle:

(i) Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or the Department;

(ii) Trees that are part of a historic site or associated with a historic structure or designated by the Department or local authority as a national, State, or local Champion Tree; and

(iii) Trees having a diameter measured at 4.5 feet above the ground of:

1. 30 inches; or

2. 75% of the diameter, measured at 4.5 feet above the ground, of the current State Champion Tree of that species as designated by the Department] **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, PRIORITY RETENTION AREAS SHALL BE RETAINED, PROTECTED, AND LEFT IN AN UNDISTURBED CONDITION UNLESS THE APPLICANT HAS PROVIDED WRITTEN JUSTIFICATION THAT IS AFFIRMATIVELY APPROVED WITH WRITTEN FINDINGS BY THE STATE OR LOCAL AUTHORITY.**

**(II) PRIORITY RETENTION AREAS MAY NOT BE CLEARED TO ACCOMMODATE THE CONSTRUCTION OF TEMPORARY:**

1. **SEDIMENT AND EROSION CONTROL DEVICES; OR**

2. **STORMWATER MANAGEMENT DEVICES.**

1           (2) THE WRITTEN JUSTIFICATION FOR THE FAILURE TO RETAIN OR  
2 PROTECT A PRIORITY RETENTION AREA SHALL INCLUDE STATEMENTS:

3                   (I) EXPLAINING THE REASONS THAT THE DEVELOPMENT  
4 CANNOT BE ALTERED TO PRESERVE THE PRIORITY RETENTION AREA;

5                   (II) OF THE ALTERNATIVES THAT WERE CONSIDERED,  
6 INCLUDING APPLICATIONS FOR LOCAL VARIANCES THAT WOULD FACILITATE  
7 FOREST CONSERVATION BUT NOT AFFECT PUBLIC SAFETY, AND THAT NO OTHER  
8 ALTERNATIVES EXIST; AND

9                   (III) OF THE FOREST CONSERVATION BEST PRACTICES OR  
10 TECHNIQUES THAT WERE CONSIDERED AND REJECTED AND THE REASONS FOR ANY  
11 REJECTIONS.

12           (3) A STATE OR LOCAL AUTHORITY MAY NOT APPROVE A WRITTEN  
13 JUSTIFICATION UNDER THIS SUBSECTION BASED:

14                   (I) SOLELY ON COST;

15                   (II) ON A PREFERENCE TO MAINTAIN A PREFERRED SITE  
16 DESIGN;

17                   (III) ON A DESIRE TO OBTAIN MAXIMUM ZONING DENSITY OR  
18 INTENSITY; OR

19                   (IV) ON A DESIRE TO CONDUCT MASS GRADING OR CLEARING OF  
20 THE DEVELOPMENT SITE.

21 5-1608.

22           (a) The review of the forest conservation plan shall be concurrent with the review  
23 process of the State or local authority for the SKETCH OR CONCEPT PLANS, SITE  
24 DEVELOPMENT PLANS, OR PRELIMINARY REVIEW PLANS, subdivision [plan] PLANS,  
25 or the grading or sediment control [permit] PERMITS, whichever may be submitted first.

26           (b) Before the approval of the final subdivision plan, or the issuance of the grading  
27 or sediment control permit by the State or local authority, the applicant shall have an  
28 approved forest conservation plan that shall include the requirements in §§ 5-1605,  
29 5-1606, and 5-1607 of this subtitle.

30 5-1610.

(c) Except as provided in subsection (h) of this section, if any person subject to this subtitle demonstrates to the satisfaction of the appropriate State or local authority that the requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the person shall contribute money to the Fund:

(1) On or before September 30, 2014:

(i) For a project inside a priority funding area, at a rate of 30 cents per square foot of the area of required planting; and

(ii) For a project outside a priority funding area, at a rate of 36 cents per square foot of the area of required planting; and

(2) After September 30, 2014:

(i) For a project inside a priority funding area, at a rate adjusted for inflation as determined by the Department annually by regulation; and

(ii) For a project outside a priority funding area, at a rate that is 20% higher than the rate set under item (2)(i) of this subsection.

(h) (1) In lieu of a State Forest Conservation Fund, any local authority with an approved forest conservation program may establish a forest conservation fund, to be administered by the local authority, to allow a payment by any person who has demonstrated to the satisfaction of the local authority that the requirements for reforestation and afforestation on-site and off-site cannot be reasonably accomplished.

(2) (i) Subject to subparagraph (ii) of this paragraph, the rates shall be:

1. For a project inside a priority funding area, at least the same as the rates established for the State Forest Conservation Fund under subsection (c) of this section; and

2. For a project outside a priority funding area, 20% higher than the rates established under item 1 of this subparagraph.

(ii) Subject to subparagraph (iii) of this paragraph, if a local jurisdiction establishes rates for projects that are higher than the minimum rates established under subsection (c) of this section, the local authority may use a rate for a project:

1. Inside a priority funding area that is 20% lower than the rate calculated under subparagraph (i)2 of this paragraph; or

2. Outside a priority funding area that is 20% higher than the rate calculated under subparagraph (i)1 of this paragraph.



(iii) The rate established under subparagraph (ii)1 of this paragraph for a project inside a priority funding area may not be lower than the rate established for the State Forest Conservation Fund under subsection (c) of this section.

(i) (1) (I) Money deposited in the local forest conservation fund under subsection (h) of this section may [only] be spent ONLY on reforestation and afforestation, including the costs directly related to site identification, acquisition, prepurchase, and preparation, maintenance of existing forests, and achieving urban canopy goals, and may not revert to any other local general fund.

(II) A LOCAL AUTHORITY MAY ENTER INTO A MEMORANDUM OF UNDERSTANDING OR ANOTHER SIMILAR AGREEMENT WITH THE MARYLAND FORESTRY FOUNDATION, DISTRICT FORESTRY BOARDS, OR OTHER STATE, LOCAL, OR NONPROFIT ORGANIZATIONS ENGAGED IN TREE PLANTINGS ON PRIVATE FORESTLAND TO:

1. COLLABORATE ON REPLANTING REQUIREMENTS; OR

2. PROVIDE GRANTS FOR REFORESTATION PROJECTS.

(2) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph, the reforestation or afforestation requirement under this subsection shall occur in the county and watershed in which the project is located.

(ii) If the reforestation or afforestation cannot be reasonably accomplished in the county and watershed in which the project is located, then the reforestation or afforestation shall occur in the county or watershed in the State in which the project is located.

(iii) If the reforestation or afforestation cannot be reasonably accomplished in the county or watershed in which the project is located, then the reforestation or afforestation shall be accomplished through purchase of credits in, establishment, or maintenance of a forest mitigation bank in accordance with regulations of the local forest conservation program. The Reforestation Fund may not be used to finance administrative activities associated with a mitigation bank and any credits created by the Reforestation Fund may not be sold to compensate for additional forest impacts.

(j) Money collected by the local authority under § 5-1608(c) of this subtitle for noncompliance with this subtitle or regulations or ordinances adopted under this subtitle for noncompliance with a forest conservation plan or the associated 2-year management agreement shall be deposited in the local fund. The rate shall be 30 cents per square foot of the area found to be in noncompliance with the required forest conservation.

(k) Money deposited in a local forest conservation fund under subsection (j) of this section may be used by the local authority for purposes related to implementing this subtitle.

1   **5-1614.**

2           **THE DEPARTMENT SHALL:**

3                   **(1)   PUBLISH A FOREST CONSERVATION ACT TECHNICAL MANUAL TO**  
4 **ASSIST INTERESTED PARTIES IN IMPLEMENTING AND COMPLYING WITH THIS**  
5 **SUBTITLE; AND**

6                   **(2)   REVIEW AND UPDATE THE TECHNICAL MANUAL AT LEAST EVERY**  
7 **10 YEARS.**

8           SECTION 2. AND BE IT FURTHER ENACTED, That on or before December 1,  
9 2018, the Department of Natural Resources, in consultation with the Sustainable Forestry  
10 Council, shall update the Forest Conservation Act technical manual to reflect statutory and  
11 regulatory changes made since 1997, to incorporate current best practices for planting and  
12 mitigation efforts, and to ensure that priority retention areas are protected to the maximum  
13 extent when development occurs.

14           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2018.

Department of Legislative Services  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 766 (Delegate Healey, *et al.*)  
Environment and Transportation

---

**Natural Resources - Forest Conservation Act - Standards and Requirements**

---

This bill modifies the Forest Conservation Act (FCA) by (1) redefining what forests areas are priorities for retention and protection; (2) modifying the standards for approval of clearing of priority retention areas; (3) increasing the reforestation requirement for approved clearing of priority retention areas; (4) modifying the timing of the review of a forest conservation plan; (5) authorizing local governments to enter into agreements for tree planting; and (6) requiring the Department of Natural Resources (DNR) to publish and periodically update an FCA technical manual.

---

**Fiscal Summary**

**State Effect:** State expenditures (multiple fund types) may increase, potentially significantly, to comply with the bill in relation to State construction projects. General fund expenditures increase by \$132,500 in FY 2019 and by \$60,000 annually thereafter for contractual services to implement the bill. Special fund fee-in-lieu payment revenues and expenditures may be affected.

**Local Effect:** Local government expenditures may increase to comply with the bill in relation to local government construction projects and for additional local forest conservation program personnel. Local fee-in-lieu payment revenues and expenditures may be affected.

**Small Business Effect:** Meaningful.

---

## Analysis

### Bill Summary:

#### *Priority Retention Areas Redefined*

The bill redefines what areas are considered priorities for retention and protection (“priority retention areas”) under FCA. A “priority retention area” is broadly defined under the bill as an area that contains high-quality forests and trees. It includes certain defined areas that are included as priority for retention and protection under existing law, but also modifies and adds others.

One existing type of priority retention area – contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site – is redefined under the bill to be contiguous forest that is at least (1) 5 acres in a priority funding area that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site; (2) 10 acres that is in a local watershed that is less than 40% forested; or (3) 20 acres.

The bill adds, as priority retention areas (1) an area identified in the Maryland’s Environmental Resources and Land Information Network (MERLIN) or iMap databases as a targeted ecological area or forest interior dwelling species habitat, unless a forest stand delineation shows that the area is not forested or is degraded by widespread disease, invasive species, or insect infestation and (2) forests in a drinking water reservoir watershed or a wellhead protection area.

#### *Modified Standards for Approval of Clearing of Priority Retention Areas*

The bill requires that priority retention areas be retained, protected, and left in an undisturbed condition unless the applicant has provided written justification that is affirmatively approved with written findings by the State or local authority (*i.e.*, DNR or the applicable local forest conservation program).

A State or local authority may not approve a written justification based (1) solely on cost; (2) on a preference to maintain a preferred site design; (3) on a desire to obtain maximum zoning density or intensity; or (4) on a desire to conduct mass grading or clearing of the development site. Priority retention areas also may not be cleared to accommodate the construction of temporary (1) sediment and erosion control devices or (2) stormwater management devices.

The written justification for the failure to retain or protect a priority retention area must include statements (1) explaining the reasons that the development cannot be altered to

preserve the priority retention area; (2) of the alternatives that were considered, including applications for local variances that would facilitate forest conservation but not affect public safety, and that no other alternatives exist; and (3) of the forest conservation best practices or techniques that were considered and rejected and the reasons for any rejections.

These standards replace requirements that, for certain priority retention areas, the applicant demonstrate that reasonable efforts have been made to protect them and the plan cannot reasonably be altered and, for other priority areas, the applicant demonstrate that the applicant qualifies for a variance (granted if a requirement would result in unwarranted hardship to an applicant).

#### *Increased Reforestation Ratio for Clearing of Priority Retention Areas*

For a priority retention area, if it is approved to be cleared, the area of forest removed above the applicable forest conservation threshold must be reforested at a ratio of one acre planted for every one acre removed, instead of at a ratio of one-quarter acre planted for every one acre removed. An existing provision allowing forest retained above the applicable forest conservation threshold to be credited against the number of acres required to be reforested is not altered by the bill.

#### *Timing of Forest Conservation Plan Review*

The bill modifies an existing provision that requires review of a forest conservation plan to be concurrent with the review process of the State or local authority for the subdivision plan, or the grading or sediment control permit, whichever may be submitted first. The bill instead requires the review to be concurrent with review of the sketch or concept plans, site development plans, preliminary review plans, subdivision plans, or the grading or sediment control permits, whichever may be submitted first.

#### *Agreements for Tree Planting*

The bill authorizes a local authority to enter into a memorandum of understanding or another similar agreement with the Maryland Forestry Foundation, district forestry boards, or other State, local, or nonprofit organizations engaged in tree plantings on private forestland to (1) collaborate on replanting requirements or (2) provide grants for reforestation projects.

#### *Forest Conservation Act Technical Manual*

DNR must (1) publish an FCA technical manual to assist interested parties in implementing and complying with the Act and (2) review and update the technical manual at least every 10 years. DNR, in consultation with the Sustainable Forestry Council, must, by

December 1, 2018, update the FCA technical manual to reflect statutory and regulatory changes made since 1997, to incorporate current best practices for planting and mitigation efforts, and to ensure that priority retention areas are protected to the maximum extent when development occurs.

## **Current Law:**

### *Forest Conservation Act, In General*

The Forest Service within DNR administers FCA, but it is primarily implemented on the local level. FCA establishes minimum forest conservation requirements for land development, and local governments with planning and zoning authority are required to develop local forest conservation programs that meet or are more stringent than the requirements of FCA. FCA applies to any public or private subdivision plan or application for a grading or sediment control permit by any person, including a unit of State or local government, on areas 40,000 square feet or greater, subject to certain exceptions.

A proposed construction activity goes through a process of evaluation of existing vegetation on a site and development of a forest conservation plan for the site defining how forest area will be retained and/or afforestation or reforestation will be undertaken. If afforestation or reforestation requirements cannot be reasonably accomplished on-site or off-site, payment may be made into the applicable forest conservation fund (fee-in-lieu payments) to be spent by the State or the local government on reforestation and afforestation, or into a forest mitigation bank. A State Forest Conservation Fund holds funds associated with projects reviewed by the State, and local forest conservation funds are associated with local forest conservation programs. Forest mitigation banks, which are approved and regulated by the State or a local forest conservation program, are areas of land that have been intentionally afforested or reforested for the express purpose of selling credits to others for compliance with afforestation and reforestation requirements.

### *Priorities for Retention and Protection*

Under FCA, certain trees, shrubs, plants, and specific areas must be considered priority for retention and protection and be left in an undisturbed condition unless certain conditions are met. The following must be left undisturbed unless the applicant has demonstrated, to the satisfaction of the State or local authority that reasonable efforts have been made to protect them and the plan cannot reasonably be altered:

- trees, shrubs, and plants located in sensitive areas including 100-year floodplains, intermittent and perennial streams and their buffers, coastal bays and their buffers, steep slopes, and critical habitats; and

- contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.

The following must be left undisturbed unless the applicant has demonstrated that the applicant qualifies for a variance (which is granted if a requirement would result in unwarranted hardship to an applicant):

- trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or DNR;
- trees that are part of a historic site or associated with a historic structure or designated by DNR or the local authority as a national, State, or local Champion Tree; and
- trees having a diameter, measured at 4.5 feet above the ground, of (1) 30 inches or (2) 75% of the diameter, measured at 4.5 feet above the ground, of the current State Champion Tree of that species as designated by DNR.

#### *Conservation Thresholds and Reforestation Requirements*

If forest is cleared, FCA establishes requirements for reforestation (replacement of cleared forest land) which are determined based on a conservation threshold, which is a percentage of the net tract area of a site. If the portion of the net tract area which is forested is below the percentage, or if clearing causes it to be below the percentage, any clearing of forested area below the percentage must be replaced at a ratio of 2:1. For clearing above the threshold percentage, cleared forest must be replaced at a ratio of 1/4:1, with the exception that each acre of forest retained above the applicable forest conservation threshold is credited against the number of acres required to be forested pursuant to the 1/4:1 reforestation ratio. The conservation threshold varies by land use category:

- agricultural and resource areas – 50% of net tract area;
- medium density residential areas – 25% of net tract area;
- institutional development areas – 20% of net tract area;
- high density residential areas – 20% of net tract area;
- mixed use and planned unit development areas – 15% of net tract area; and
- commercial and industrial use areas – 15% of net tract area.

#### *Timing of Review of a Forest Conservation Plan*

Review of a forest conservation plan must be concurrent with the review process of the State or local authority for the subdivision plan, or the grading or sediment control permit, whichever may be submitted first.

### *Fees-in-lieu*

Payment of fees-in-lieu, to the State Forest Conservation Fund, are made at rates adjusted for inflation as determined by DNR annually by regulation. The rate for a project outside a priority funding area must be 20% higher than the rate for a project inside a priority funding area. The current rates identified in DNR regulations are \$0.305 per square foot for a project inside a priority funding area and \$0.366 per square foot for a project outside a priority funding area. DNR must use the funding for reforestation and afforestation.

Fee-in-lieu rates for local forest conservation funds must be at least the same as the rates for the State Forest Conservation Fund. Fees-in-lieu deposited in a local forest conservation fund may only be spent on reforestation and afforestation (including the costs directly related to site identification, acquisition, prepurchase, and preparation), maintenance of existing forests, and achieving urban canopy goals, and may not revert to any other local general fund.

**Background:** For additional information on FCA and other forestry programs in the State, see the 2017 report published by the Department of Legislative Services, *Forest Conservation Act and Other Forestry Programs in Maryland*.

### **State Fiscal Effect:**

#### *State Construction Projects*

State expenditures (including bond, PAYGO, Transportation Trust Fund, and nonbudgeted expenditures) may increase, potentially significantly, to comply with FCA, as modified by the bill, for State construction projects. The bill's modification of what areas are considered priority retention areas and the bill's modification of the standards for approval of clearing of priority retention areas may limit the extent to which forest area can be cleared for a given State construction project, which could increase construction costs for an alternative design of the construction. In addition, the increase in reforestation requirements for any approved clearing of priority retention areas may increase costs to meet reforestation requirements for a State construction project.

#### *DNR Updates to Geographic Information Systems Data and Technical Manual*

General fund expenditures increase by \$132,500 in fiscal 2019, reflecting the cost of (1) contractual services to perform geographic information systems (GIS) work to update the MERLIN database so that it can serve as a basis for identifying targeted ecological areas and forest interior dwelling species habitat and (2) contractual services for assistance in updating and publishing the FCA technical manual. DNR indicates that relevant GIS information in the MERLIN database is currently made available only for informational



guidance and has not been updated in at least 10 years. It will need to be upgraded in order for it to be relied on to determine what areas are priority retention areas as a result of being targeted ecological areas or forest interior dwelling species habitat.

|                                            |                  |
|--------------------------------------------|------------------|
| MERLIN database update                     | \$120,000        |
| FCA technical manual update and publishing | <u>12,500</u>    |
| <b>Total FY 2019 DNR Expenditures</b>      | <b>\$132,500</b> |

Future year expenditures reflect ongoing annual costs of \$60,000 for contractual services to maintain targeted ecological area and forest interior dwelling species habitat GIS data in the MERLIN database.

#### *Fee-in-Lieu Revenues and Expenditures*

DNR special fund revenues and expenditures from fee-in-lieu payments made to the State Forest Conservation Fund may be affected (in a corresponding manner, either both increasing or both decreasing), but it cannot be reliably estimated whether revenues and expenditures increase or decrease overall, or to what extent. Fee-in-lieu payments are an alternative way of meeting reforestation or afforestation requirements if the developer cannot reasonably accomplish the reforestation or afforestation. If the bill's modification of what areas are considered priority retention areas and the modification of the standards for approval of clearing of priority areas limit the extent to which forest is cleared for development, fee-in-lieu payments may decrease. However, larger fee-in-lieu payments are likely received from clearing of priority retention areas that is approved.

**Local Fiscal Effect:** Local governments are expected to be affected in a similar manner as the State, potentially incurring increased costs for local government construction projects and experiencing changes in fee-in-lieu revenues and associated expenditures.

Local forest conservation programs' workload may be affected by the bill's changes, but it is difficult to predict what the net effect of the bill's changes will be on the programs' workload of reviewing forest conservation plans and administering local forest conservation funds. Of a small number of local governments contacted, two expect an increased workload, one of which indicates that an additional position is required, and others indicated that there is no material impact.

**Small Business Effect:** Small businesses (e.g., developers/builders and potentially others affected by the cost and/or rate of development) are expected to be meaningfully impacted by the bill to the extent that it limits the forest area in the State that can be cleared for development and/or increases costs to meet reforestation requirements for forest area that is cleared.

## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 610 (Senator Young, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Department of Natural Resources; Maryland Department of Transportation; Department of General Services; Kent, Montgomery, Washington, and Worcester counties; cities of Salisbury and Westminster; Town of Leonardtown; NAIOP (Maryland Chapter); Maryland Building Industry Association; Department of Legislative Services

**Fiscal Note History:** First Reader - February 18, 2018  
md/lgc

---

Analysis by: Scott D. Kennedy

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510